

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: SHERRY JOHNSON

)
)

OEIG Case: 10-00929

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Sherry Johnson at her last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. ALLEGATIONS AND SUMMARY

The OEIG received a complaint on August 26, 2010 from the Illinois Workers’ Compensation Commission (IWCC or Commission). The source of the complaint was [REDACTED] alleging that IWCC employee Sherry Johnson was inappropriately accessing IWCC information and selling it to non-State parties.

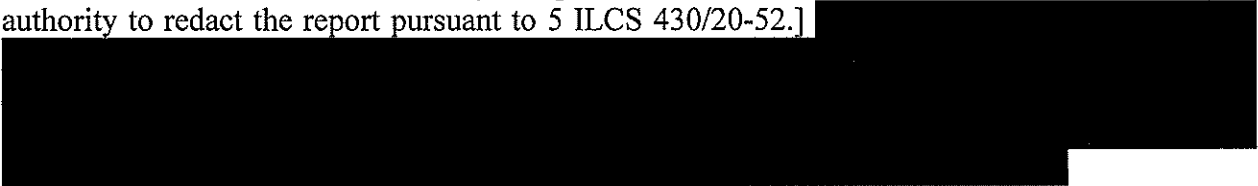
After commencing an administrative investigation, and prior to the conclusion of the investigation, the OEIG determined that there may be probable cause to believe that IWCC employee Sherry Johnson engaged in criminal conduct. In light of Ms. Johnson’s statements, on

November 10, 2011, the OEIG referred all non-*Garrity v. State of N.J.*, 385 U.S. 493 (1967), material¹ to the appropriate law enforcement agency for review.

On May 17, 2012, the matter was referred back to the OEIG and thereafter the OEIG completed its administrative investigation.

The OEIG concludes that Ms. Johnson sold IWCC information to a third party in violation of the State Officials and Employees Ethics Act (Ethics Act) and the IWCC Employee Manual's policies. The OEIG also concludes that Ms. Johnson failed to cooperate in the investigation in that she made knowing false statements to OEIG investigators. The OEIG recommends that Ms. Johnson be terminated from her employment with the IWCC.

In the course of investigating this matter, the OEIG discovered that a substantial number of IWCC files and some IWCC boxes labeled "open medical" were stored in unlocked IWCC offices and in hallways that were accessible by the public. The OEIG also discovered that the IWCC exercised little, if any, discretion or control regarding which employees were granted around-the-clock (24/7) access to IWCC offices. Though the investigation did not establish a direct link between lack of security and Ms. Johnson's misconduct, the lax control nevertheless created an environment that may have facilitated Ms. Johnson's misconduct. [The following section contains information that may compromise security and the Commission is exercising its authority to redact the report pursuant to 5 ILCS 430/20-52.]



II. BACKGROUND

A. The Illinois Workers' Compensation Commission

The IWCC resolves disputes between injured workers and their employers regarding entitlement to workers' compensation. Disputes are generally resolved in one of two ways. First, an arbitrator may conduct a trial.² One of the factors to be considered by the arbitrator is whether any medical treatments and/or bills were reasonable and necessary.³ To that end, petitioners and respondents will often file medical records relating to the injuries at issue. Those medical records are contained in the IWCC's case files.

¹ The OEIG did not provide the law enforcement agency with reports documenting Ms. Johnson's interviews because of "Garrity issues," *i.e.*, issues raised by the Supreme Court decision in *Garrity v. State of N.J.*, 385 U.S. 493 (1967), which held that compelled statements from state employees in connection with administrative proceedings are, under the 5th and 14th Amendments, inadmissible in subsequent criminal proceedings.

² Illinois Workers' Compensation Commission Handbook on Workers' Compensation and Occupational Diseases for Injuries and Illnesses on or after 6/28/11, p. 13, available at, <http://www.iwcc.il.gov/handbook062811.pdf> (last visited September 6, 2012).

³ *Id.*

Second, the parties may negotiate a settlement in which the petitioner agrees to close a claim in exchange for an agreed-upon sum of money.⁴ If the parties reach an agreement, they memorialize the terms of that agreement in a Settlement Contract.⁵ Historically, the Settlement Contract has contained, among other things, the petitioner's Social Security number.⁶

B. IWCC Employee Sherry Johnson

Sherry Johnson has been an employee of the IWCC for approximately 37 years. Ms. Johnson works in the main office of the IWCC on the 8th floor of the James Ryan Thompson Center (JRTC). Her current position is Data Processing Assistant in the Review Department. Her job duties are clerical in nature, and include processing Settlement Contracts and related documents by placing them in the appropriate IWCC files.

C. [REDACTED] [This section pertains to an employee who received less than three-days' suspension and the Commission is exercising its authority to redact the report pursuant to 5 ILCS 430/20-52.]

[REDACTED]

III. INVESTIGATION

The OEIG initially conducted an administrative investigation into the allegation that Sherry Johnson was selling information from IWCC files to non-State parties. As noted above, prior to the conclusion of the investigation, the matter was referred to the appropriate law enforcement agency for review but was subsequently returned to the OEIG. In addition, the investigation into the initial allegations led to a subsequent investigation related to the access and security, or lack thereof, of IWCC files. Each of those investigations is described below.

A. Investigation of Sherry Johnson

The OEIG's investigation of the allegations against Sherry Johnson included, among other things:

- a review of Ms. Johnson's photocopy records, work hours records and State phone records;
- an interview of [employee 1];
- interviews of the [employee 2], and [employee 3];

⁴ *Id.* at p. 15.

⁵ *Id.* at pp. 15-16.

⁶ Illinois Workers' Compensation Commission News, *available at*, <http://www.iwcc.il.gov/news.htm#ssn> (last visited March 26, 2012). On November 16, 2011, the Commission announced on its webpage that it had stopped collecting Social Security numbers in the Settlement Contract. *Id.* The Commission also stated that it would remove Social Security numbers from existing files upon request. *Id.* The Commission stated that it will continue requesting Social Security numbers in those limited instances where the information is necessary, *e.g.*, to process payment from the Rate Adjustment Fund or Injured Workers Benefit Fund. *Id.*

- interviews of Ms. Johnson; and
- service of a subpoena on Advance Case Loans, LLC, the non-State party to whom it appeared that Ms. Johnson provided IWCC information in exchange for cash and gift cards.

Following is a description of those investigative activities.

1. Review of Photocopy Records

In light of the allegation that Ms. Johnson was providing IWCC information to non-State parties, investigators sought to determine the extent of Ms. Johnson's photocopier usage. Investigators reviewed photocopier usage relating to the PIN number assigned to Ms. Johnson, the only person in her unit, for the period of February 10, 2011 to March 14, 2011.⁷ The records show that between February 10, 2011 and March 9, 2011, the total number of pages copied was 2,643. (As noted below, Ms. Johnson's job duties do not require her to copy documents for the public.) The following chart details the number of copies that were made using the PIN assigned to Ms. Johnson:

Date of Count	Total Pages Copied
February 14, 2011	139
February 16, 2011	147
February 17, 2011	279
February 18, 2011	222
February 22, 2011	166
February 23, 2011	208
February 24, 2011	147
February 28, 2011	549
March 1, 2011	197
March 3, 2011	260
March 4, 2011	117
<u>March 9, 2011</u>	<u>212</u>
Total	2,643

2. Review of Sherry Johnson's Work Hours

In light of the extensive copying Ms. Johnson engaged in and in order to determine the extent to which she may have been in the IWCC offices during off-hours, the OEIG reviewed her after-hours entry and departure records from the JRTC for two time periods. The two time periods were from October 1, 2010 to December 22, 2010 and from February 16, 2011 to March 8, 2011.

⁷ In fact, Ms. Johnson acknowledged in her interview that she is the only person in her department, and therefore would be the only person using PIN number 0012.

During those two time periods, Ms. Johnson spent over 27 hours in the IWCC outside of her regular work hours. Despite the substantial after-hours time Ms. Johnson spent at IWCC offices, she did not note any of this time on her timesheets.

The following chart details the amount of time Ms. Johnson spent in the IWCC office outside of her 9:00 am to 5:30 pm work hours.

Date	Day of Week	Time In	Time Out	After Hours Time Spent at the JRTC
October 1, 2010	Friday	6:28 pm	7:16 pm	48 minutes
October 11, 2010	Monday	7:05 pm	7:42 pm	37 minutes
October 21, 2010	Thursday	8:23 pm	11:14 pm	2 hours and 51 minutes
October 24, 2010	Sunday	8:37 am	1:59 pm	5 hours and 22 minutes
October 31, 2010	Sunday	7:48 am	9:07 am	1 hour and 19 minutes
November 5, 2010	Friday	N/A ⁸	7:40 pm	2 hours and 10 minutes
November 22, 2010	Monday	N/A	6:41 pm	1 hour and 11 minutes
December 6, 2010	Monday	6:51 pm	7:41 pm	50 minutes
December 19, 2010	Sunday	4:35 pm	4:50 pm	15 minutes
December 22, 2010	Wednesday	6:18 am	N/A ⁹	
February 16, 2011	Wednesday	N/A	7:35 pm	2 hours and 5 minutes
February 17, 2011	Thursday	N/A	8:15 pm	2 hours and 45 minutes
February 22, 2011	Tuesday	N/A	7:12 pm	1 hour and 42 minutes
February 26, 2011	Saturday	4:57 pm	5:48 pm	51 minutes
February 28, 2011	Monday	N/A	7:39 pm	2 hours and 9 minutes
March 6, 2011	Sunday	7:29 am	7:59 am	30 minutes
<u>March 8, 2011</u>	Tuesday	N/A	7:30 pm	<u>2 hours</u>
Total				27 hours and 25 minutes

3. Review of Sherry Johnson's State Phone Records

Investigators obtained and reviewed Ms. Johnson's State office phone records for the period January 1, 2009 to June 30, 2011 in order to determine whom she was contacting during work hours. During that time period, among other apparently non-work related calls, investigators discovered that she placed approximately 104 calls to a telephone number associated with a company called Advance Case Loans, LLC.

⁸ In the instances in which there is an "N/A" entry in the "Time In" column, Ms. Johnson apparently entered the JRTC during regular hours. She nevertheless left the JRTC on those days after her scheduled departure time of 5:30 pm. The "Approximate After Hours Time Spent" in those instances is the time between Ms. Johnson's scheduled departure time of 5:30 p.m. and her actual departure time.

⁹ Records obtained from [employee 2] reveal that Ms. Johnson was scheduled to be out of the office for personal time on December 22, 2010. She nevertheless appears to have entered the office at 6:18 am. There is no record of her departure.

Investigation revealed that Advance Case Loans describes itself as “the fastest growing litigation financing company in the United States.”¹⁰ Via its website, the company tells prospective clients that:

*“[w]e provide lawsuit cash advances to plaintiff’s [sic] in a number of states throughout the country. We provide funding for plaintiff’s [sic] in all types of personal injury cases.”*¹¹

Workers’ compensation cases are expressly listed as a type of case that Advance Case Loans funds.¹²

4. Interviews of [employee 1]

On March 24, 2011 and October 19, 2011, investigators interviewed [employee 1]. He stated that Ms. Johnson’s job duties include receiving IWCC Notices that are generated when claims are filed with the IWCC, filing the Notices in their respective file jackets, and then storing the file jackets in a file room known as the “Vault.” He was surprised to learn that Ms. Johnson was using the IWCC photocopier to make photocopies. He stated that her job duties do not require her to make photocopies for the public and could not think of a reason for her to interact with the public in the course of her official duties.

Investigators asked the [employee 1] about the public’s ability to access IWCC case files. He stated that the IWCC has public computer terminals that are accessible by attorneys and that provide access to case-related information stored on the IWCC mainframe. To search for case-related information, a user is required to enter a petitioner’s name and/or case number. The computer provides access to limited information, and does not provide access to the petitioner’s Social Security number, address or date of birth.

[Employee 1] also said that, once an attorney or other member of the public has a case number, he or she can visit the “Vault” and request a physical copy of the file. If a person wishes to copy file documents, he or she may do so at a 25¢ money-operated photocopier located in that area. Persons are not allowed to remove the original files from the IWCC premises.

Investigators asked about the types of information Ms. Johnson had access to from IWCC’s database. In response, [employee 1] said that she only had access to the same type of information that was available to the public via the IWCC computer terminal.

[Employee 1] further stated that he has never approved overtime for Ms. Johnson and that he is unaware of her having worked any overtime. He is aware, however, that she generally is at the IWCC earlier than her scheduled start time, but he is not aware of her performing any work duties during those times.

¹⁰ <http://www.advancecaseloans.com/> (last visited Dec. 27, 2011) (emphasis added).

¹¹ *Id.*

¹² *Id.*

5. Interview of [employee 2]

On February 8, 2011, an investigator interviewed [employee 2]. [Employee 2] told the investigator that the public has access to the IWCC's information via a computer terminal. She said, however, that in order to access IWCC information, a user must input a petitioner's full name and/or a case number. [Employee 2] said that the files contained the petitioner's name, the type of injury at issue, the date the claim was filed, and a Social Security number. She said a law firm or loan company would find the information regarding the nature and extent of the injury to be useful because it would enable them to determine whether a case is worth pursuing. She said that while the information in the files is available to the public via computer terminals, the mainframe is old and requires the entry of a name or case number. Therefore, access to the files through Ms. Johnson would make it easier for the loan companies to choose which petitioner to contact.

[Employee 2] said that she could not think of a reason for Ms. Johnson to work overtime, or on weekends or after-hours. [Employee 2] also said that she knew of no reason to justify Ms. Johnson's use of IWCC's photocopy machine.

6. Interview of [employee 3]

On April 7, 2011, investigators interviewed [employee 3]. She told investigators that, [redacted], as a result, she was responsible for performing Ms. Johnson's assigned duties. She informed investigators that while performing Ms. Johnson's normal work duties, she noticed that IWCC Notices were missing from some of the IWCC case files. She also reviewed the files from which IWCC Notices were missing, and found that each of them involved *pro se* cases (cases in which the petitioner is not represented by counsel) in which settlements (money) had been offered to the *pro se* petitioner.

7. First Interview of IWCC Employee Sherry Johnson

On March 14, 2011, investigators interviewed Sherry Johnson. In her interview, Ms. Johnson admitted that she received cash and other compensation for providing IWCC documents to non-State employees. Ms. Johnson said that, upon request, she provided documents to a woman associated with a "clerking" service. She stated that the woman would provide her with a petitioner's case number and ask her to look up the petitioner's case and provide copies of documents from the file. Ms. Johnson also provided the OEIG with a voluntary written statement in which she described her conduct as follows:

"I made copies of documents (applications, decisions, or anything inside the file) for clerks or attys., and sometimes was compensated with gifts, food, + gift cards."

Ms. Johnson said that she used the photocopier that is assigned to the production control department and used PIN number 0012 when she made copies. Ms. Johnson said that she is the only person in her department, and therefore, the only one using that code.

Ms. Johnson also stated that the woman from the “clerking” service was the person who provided the gift cards and cash payments, but said she was unable to recall the woman’s name. Ms. Johnson explained that the woman from the clerking service would sometimes meet her at her workstation to pick up information, and at other times would meet her in the atrium of the JRTC.

In response to questions regarding the amount of compensation she received for providing the files to the clerking service, Ms. Johnson said that from sometime in 2009 until November or December 2010, she received ten cash payments ranging from \$25 to \$50, and fifty or more gift cards with an approximate value of \$50 each. Ms. Johnson said that the gift cards were for Macy’s, Target and Starbucks, and recalled also receiving at least one gift card for Lettuce Entertain You Restaurants.

Ms. Johnson denied that she provided anything other than public (non-confidential) information to the clerking service. She also repeatedly denied coming into the IWCC offices during her off-hours for the purpose of making photocopies or engaging in illicit activities. She said she only came to the IWCC offices during off-hours in order to catch up on her regular work. Ms. Johnson admitted, however, that she knew her conduct was unethical.

8. Second Interview of Sherry Johnson

On September 30, 2011, OEIG investigators conducted a second interview of Sherry Johnson.¹³ Ms. Johnson confirmed that she had accurately told investigators in her first interview that she had received compensation for providing documents to non-State parties. Ms. Johnson stated that she never demanded or asked for cash payments for the information she provided. Ms. Johnson stated that she nevertheless knew that accepting the compensation was wrong and did not tell anyone about the payments because she knew that her actions were wrong. Ms. Johnson also acknowledged that making copies of IWCC documents and providing them to the public was not part of her job duties.

In contrast to her statements in her first interview, Ms. Johnson stated in her second interview that she would sometimes come to the IWCC offices during off-work hours to make copies of the documents requested by the non-State party. She nevertheless persisted in her claim that she often comes into the IWCC to perform work on her off-hours so that she does not fall behind in her work. She said she comes into the JRTC during her non-work hours because she likes to perform her work duties, despite the fact that she is not compensated for off-hours work. She said she performs her work duties even during her non-work hours so she can keep up with her work and get ahead.

With regard to obtaining files to copy for non-State parties, Ms. Johnson said that sometimes she would already have the file with the requested information in her possession as part of her normal work duties. She said that if she did not have a particular file, she would

¹³ Between the two interviews of Ms. Johnson, an OEIG investigator periodically spoke with her via the telephone. The purpose of those phone calls was to corroborate Ms. Johnson’s statements in her March 14, 2011 interview.

request the file from the Vault, or search for the file on her coworkers' desks or in files that were stored in the hallway.

Ms. Johnson said she believed the name of the woman who requested IWCC information was "Liz, Lizzie, Lisa" or some variation of those names (hereinafter referred to as "Liz"). Ms. Johnson said that, at least two or three times a month, Liz would provide her with a list of IWCC case numbers or names of petitioners. Liz would provide the list by telephone, in person, by leaving a note on Ms. Johnson's desk, or by sending one of the clerks that worked for Liz to contact Ms. Johnson. Ms. Johnson said that the list would contain up to 20 or 30 names or case numbers. The list also would contain requests for specific documents such as Settlement Contracts, Applications for Adjustment of Claims, and Decisions, which she would gather for the purpose of making copies. According to Ms. Johnson, Liz would sometimes ask for IWCC files that were not yet available to the public. Ms. Johnson said that, after she collected the requested information, she would use her State-issued telephone to call Liz. According to Ms. Johnson, Liz, or her representative, would then meet her (Ms. Johnson) to collect the information either in the IWCC offices or in the JRTC's atrium.

Ms. Johnson stated that she did not believe the information she was providing to Liz was confidential. Rather, she believed that it was public information. She nevertheless acknowledged that the documents she was providing contained settlement dollar-amounts, medical information such as descriptions of injuries and diagnoses, and at least partial Social Security numbers. She said she never realized until being interviewed that the information she was providing could be considered confidential.

In discussing her State phone records, Ms. Johnson told investigators that she did call one of the telephone numbers associated with Advance Case Loans, and that it was the number used by the clerking service to which she was providing documents. Ms. Johnson said she would use that number to contact Liz. When asked by investigators whether she was familiar with Advance Case Loans, Ms. Johnson said that Advance Case Loans was the "clerking" service with which she had been dealing.

9. Advance Case Loans, LLC

On June 28, 2012, the OEIG issued a subpoena to Advance Case Loans seeking documents relating to the identity of its employees and relating to certain IWCC case files that investigators believed Ms. Johnson had provided to Advance Case Loans. The subpoena was directed to [a principal], whom the OEIG understood to be a principal of Advance Case Loans.

On July 11, 2012, the OEIG received a letter dated July 10, 2012 from counsel for [the principal]. In the letter, counsel stated that Advance Case Loans was "out of business and in the process of liquidation." The letter further stated that [the principal] was the only officer of Advance Case Loans, and that he would decline to answer questions relating to the subpoena or to produce documents responsive to the subpoena based upon his "Fifth-Amendment rights[.]"

B. Investigation of IWCC's Protection of Files

In the course of investigating the allegations involving Sherry Johnson, the OEIG conducted several IWCC after-hour site visits for the purpose of determining what security measures, if any, IWCC staff implemented and what documents would be readily available to Ms. Johnson after regular IWCC work hours. During the course of this part of the investigation, the OEIG discovered that certain IWCC information, including information within unlocked IWCC arbitrator offices and in open hallways, was readily accessible to the public. Following is a summary of that portion of the investigation.

1. Interview of [Employee 4]

On October 24, 2011, investigators interviewed [employee 4]. [Employee 4] has held that position since January 2009. With regard to 24 hours-a-day/7 days-a-week access (24/7 access) to the JRTC, [employee 4] said that department managers would have to submit a request for an employee to be afforded 24/7 access. [Employee 4] said that she was not aware of any form that would be submitted and said that it would likely be made via an e-mail.

[Employee 4] said that since she started her position in January 2009 there has been no policy in place for determining which employees would be granted 24/7 access. She stated that there is no master list that denotes which IWCC employees have 24/7 access, nor is there any periodic review of who has been given 24/7 access, nor any redetermination as to whether an employee should continue to have 24/7 access.

[Employee 4] said that, if Ms. Johnson's work hours were listed as 9:00 a.m. to 5:30 p.m., there would be no need for Ms. Johnson to have 24/7 access.


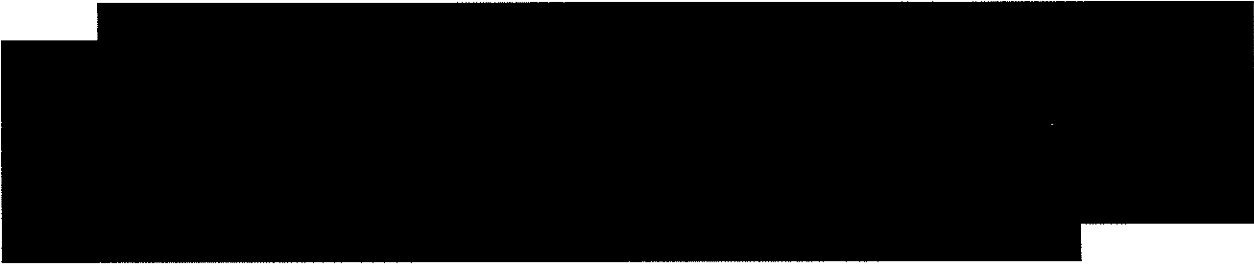
2. Interview of [employee 5]

On May 17, 2011, investigators interviewed [employee 5]. When asked about State employees' access to the JRTC, [employee 5] said that State employees are given one of two designations by their respective agencies, either of which controls their access to the JRTC. The first designation of "Building Hours Only" permits access to the JRTC only during work hours. The second designation of "Anytime Access" allows employees access at any hour, *i.e.*, 24/7 access. [Employee 5] said that his department has no input with regard to the designation that State employees receive from their agencies and that decision rests solely with their respective agencies.

[The following section contains information that may compromise security and the Commission is exercising its authority to redact the report pursuant to 5 ILCS 430/20-52.]

[REDACTED]

[REDACTED]

3. Interview of [employee 6]

On November 1, 2011, investigators interviewed [employee 6]. [Employee 6's] job responsibilities include overseeing operations of the Vault and the staff that work in it. In describing the public's access to information stored in the Vault, [employee 6] said that the public could request any number of IWCC files, but that only two files would be provided at one time. He said that, to avoid files being tampered with, his staff requires the requester to review the files in the presence of IWCC staff and does not allow the files to be taken away from the Vault.

In discussing IWCC employees' access to files, [employee 6] said that the IWCC uses a proprietary program that permits employees to make requests electronically. After an IWCC employee submits an electronic request for a file, it will be provided to the employee within approximately 24 hours. He said that he does not allow employees to check out files in any other manner.

When asked how the IWCC stores and maintains physical files, [employee 6] said that the IWCC has "retention issues[.]" According to [employee 6], only files from 2001 through 2011 are stored in the Vault. Older files are kept in an off-site storage facility. Newer files (approximately 2011 forward) are stored on IWCC premises in the JRTC, but outside of the Vault. When investigators pointed out that they saw numerous files in the IWCC's hallways, he said that, prior to storing files in the halls, he "used every vacant office I have."

[Employee 6] said that he has repeatedly raised the issue of file security, but that other issues have always taken priority. He said that he has spoken with the IWCC Secretary and she has informed him that the IWCC will be addressing the situation.

4. Interview of [employee 7]

On November 15, 2011, investigators interviewed [employee 7]. He said that, although he had been hired as [redacted] in approximately May 2011, he had only minimally performed

job functions associated with that position. He said that he had been asked to work primarily as the [redacted] while the IWCC sought a permanent employee for the position.

[Employee 7] said that he noticed the practice of files being stored in the hallways when he first began his employment at the IWCC and has approached [REDACTED] about the problem. [Employee 7] said that the storage issues are caused, in part, by the IWCC not purging files. He said that several factors contributed to the problem, including litigation holds. He also said that older files were not purged until recently.

[Employee 7] also said that employees with offices were required to put their trash cans outside of their offices at night and lock their office doors. Employees who worked in cubicles were required to clear their desks and put papers in locked cabinet drawers. When asked by investigators whether these policies were memorialized, he said he was unsure.

5. OEIG Site Visits to IWCC's Office in the JRTC

In the course of the investigation, investigators conducted three after-hours site visits of the IWCC's main office. Those site visits occurred on April 6, 2011, November 1, 2011 and February 1, 2012, and consisted of investigators viewing the premises for the purpose of determining what security measures, if any, IWCC staff implemented and what documents would be readily available to Ms. Johnson after regular IWCC work hours.

The IWCC's main office occupies the entire 8th floor of the JRTC. The 8th floor is accessible via internal stairwells and elevators. There are no outer doors securing the IWCC's premises from the elevator bank and, upon exiting the elevator bank or the stairwell, the IWCC office space is immediately accessible.

Off the elevator bank on the 8th floor there is a reception desk on the right-hand side and a waiting area on the left-hand side. Beyond the reception desk is an area of open cubicle space with numerous filing cabinets. The IWCC waiting area is connected to several different areas and hallways, including one hallway leading to where arbitration hearings are held. Off the 8th floor stairwell are various cubicles and office space.

Throughout the 8th floor there are several types of workspaces. There are individual offices with their own doors, and there are open cubicles. There also are "suite offices," where a single door leads from a hallway to a reception area to which four or five individual offices with their own doors are attached. Typically, the IWCC Commissioners and higher-ranking employees are situated in a suite office. Arbitrators typically have individual offices.

Investigators found that, although the Vault was locked, the doors of most individual offices, including suite offices, were either open, or closed but unlocked. Investigators also found that in numerous offices and on numerous desks IWCC case files and paperwork were left unsecured and in the open. Furthermore, IWCC hallways were lined with rows of boxes of IWCC case files dating from 2010 and 2011.

During the April 6, 2011 OEIG site visit, investigators specifically found the office of [REDACTED] and at least ten other offices unlocked. In each of the offices, papers and files were left unsecured.

During the November 1, 2011 OEIG site visit, investigators again found numerous doors unlocked and IWCC case files stored in the hallways. Investigators also noted that the IWCC files bore a marking stating that removal from IWCC premises was not allowed. Documents left out in the open included Settlement Contracts and Applications for Adjustment of Claims, which contain Social Security numbers, addresses, names, and medical-diagnosis information.

During the February 1, 2012 site visit, investigators again found unlocked IWCC offices, including the office of [REDACTED] and at least ten others, and were again able to view various IWCC documents left in public view in and around IWCC workspaces, office cubicles or unlocked offices. Those documents included Settlement Contracts, Applications for Adjustment of Claims, and medical information. Furthermore, investigators found approximately 15 boxes labeled "Open Medical" stored in an unsecured hallway. Investigators also found approximately 40 unlocked file cabinets that contained IWCC case files.

6. First Interview of [REDACTED]

[Sections 6 and 7 pertain to matters that may compromise security and to an employee who received less than three-days' suspension. The Commission is exercising its authority to redact these sections pursuant to 5 ILCS 430/20-52.]

a. IWCC's Treatment and Storage of Files

[REDACTED] told investigators that the IWCC historically allowed members of the public the opportunity to view information in IWCC files. Although the IWCC apparently did not consider the majority of information in its files to be confidential, [REDACTED] nevertheless acknowledged that the files may have included medical records and Social Security numbers.

[REDACTED] told investigators that the IWCC has run

[employee 1] had given several presentations about security and that, when [REDACTED] has discussed those presentations with the [employee 1], the focus had always been on IT security issues.

Investigators then presented [REDACTED] with a copy of a power point presentation entitled "IWCC IT Security Awareness: Security of Confidential & Personally Identifiable Information." [REDACTED] stated that he recalled previously seeing the presentation. [REDACTED] said that, while the presentation mentions various aspects of security—including the requirement that data be safeguarded by:

"[s]toring documents in locked cabinets when not in use[.]"

his focus was on securing the IWCC's electronic data and addressing risks associated with that information. [REDACTED]

e. OEIG Site Visits

Investigators provided [REDACTED] with copies of photographs taken by investigators during their April 6, 2011 IWCC site visit. The photographs showed numerous unlocked IWCC file cabinets that contained IWCC files. [REDACTED] stated that he recognized the cabinets as belonging to the IWCC. Despite the fact that the cabinets appeared to have locks, [REDACTED] recognized that they were unlocked and able to be opened. [REDACTED] acknowledged that the file cabinets also appeared to have empty space, which could accommodate some of the overflowing files that are being stored in the hallway. [REDACTED] told investigators that he did not know why that empty space was not being used.

7. Second Interview of [REDACTED]

On June 26, 2012, OEIG investigators conducted a second interview of [REDACTED]. The purpose of the interview was to follow up on [REDACTED] which purported to clarify some of the issues that were discussed in his April 11, 2012 interview. The interview primarily covered the security of paper case files at the IWCC, and [REDACTED] response to the allegations against Sherry Johnson.

a. Security of IWCC Case Files

██████████ stated that the Office of the Illinois Auditor General's 2009 audit of the IWCC, ██████████ and the Auditor General's 2011 audit never identified physical security of files as an issue, but, rather, focused on electronic file security. ██████████ stated that he believes the Auditor General's auditors were very thorough and, because they were on site for five months, they would have noticed that at the end of the day some office doors were not being locked, files were being left in the open, and cabinets with locks were being left unlocked. He said if they had thought that was a problem, they would have stated as much. In support of that contention, ██████████ said the auditors did notice things such as the office having too much bond paper and not having a phone that was functional for the hearing-impaired, but nevertheless noted nothing about physical storage of case files. ██████████

██████████

██████████

nevertheless acknowledged that the IWCC workspace was readily accessible by the public and that having boxes of case files left open in hallways was not an ideal situation.

██████████ was shown the portion of the 2011 audit report stating, "The Commission has the responsibility to ensure that confidential information is protected from accidental or unauthorized disclosure. Failure to establish, [and] maintain adequate procedures to handle and protect confidential and personal identifiable information could result in identity theft or other unintended use..." ██████████ stated that the foregoing admonition pertained to the security of electronic files, but conceded that it arguably could be construed as applying to physical files as well.

██████████ was also again shown a presentation prepared by the [employee 1] entitled "Threats to Confidential Information, An Ounce of Prevention is Worth a Pound of Cure!" That document identifies as one of the weaknesses putting IWCC assets at risk the "lack of physical security over confidential sensitive documents[.]" ██████████ stated that, notwithstanding the reference to security of physical files in the presentation, the [employee 1's] focus always was on the security of electronic files. ██████████

██████████

b. Allegations Against IWCC Employee Sherry Johnson

[REDACTED]

[REDACTED]

IV. ANALYSIS

The OEIG's investigation revealed that Sherry Johnson violated the IWCC Employee Manual and the Illinois State Officials and Employees Ethics Act (Ethics Act) by accepting cash and gift cards from a non-State party in exchange for providing IWCC information to the non-State party. The OEIG also concludes that Ms. Johnson failed to cooperate in the investigation.

[The following paragraph pertains to an employee who received less than three-days' suspension and the Commission is exercising its authority to redact the report pursuant to 5 ILCS 430/20-52.]

[REDACTED]

A. **Sherry Johnson Violated IWCC's Employee Manual and the Ethics Act.**

The OEIG concludes that Sherry Johnson:

- Used IWCC information for personal use;
- Used her position to obtain monetary and nonmonetary consideration;
- Conducted personal business while on State time;
- Violated the Ethics Act Gift Ban;
- Violated the IWCC Employee Manual's Gift provision;
- Misused IWCC office equipment; and
- Violated the Ethics Act requirement that she cooperate in the investigation.

Each of those findings is discussed below.

1. *Ms. Johnson Used IWCC Information for Personal Use.*

The Ethics Code section of the IWCC Employee Manual states:

Commission information is to be used only by authorized personnel in conducting Commission business and only to the extent permitted by law and rule. Employees are prohibited from using Commission information for personal use.

In this case, Ms. Johnson copied IWCC documents, specifically Settlement Contracts and Notices, in order to provide them to non-IWCC employees. Ms. Johnson admitted that she made copies of IWCC documents primarily for a clerk from Advance Case Loans in return for cash and gift cards.

According to Ms. Johnson, she would come into the office during her non-work hours and make the requested copies if the files were not available to her during her work hours. That admission is confirmed by the records showing the amount of time she was in the office during non-work hours and her access to the office after hours. Records show that she came in after hours on numerous occasions. She did not record this extra time on her time sheets and her supervisor said there was no reason for her to be in the office after hours or have access after-hours.

The photocopy records corroborate her activities. She was making a large number of photocopies, even though her supervisor stated that there was no reason for her to be doing so. Finally, Ms. Johnson's phone records show her calling a telephone number associated with Advance Case Loans 104 times over approximately 18 months.

Because she used IWCC information for her personal use, the allegation that Sherry Johnson violated the Ethics Code section of the IWCC Employee Manual's prohibition against using IWCC information for personal use is **FOUNDED**.

2. *Ms. Johnson Used Her Position to Obtain Monetary and Nonmonetary Considerations.*

The Ethics Code in the IWCC Employee Manual further states:

Employees shall not use their positions to exert influence to obtain monetary or nonmonetary considerations for themselves or others. Any instances of bribery or suspected bribery shall be reported immediately to the Chairman.

Ms. Johnson admits that she accepted monetary and nonmonetary compensation from a private party in exchange for IWCC information. Ms. Johnson used her position with the State to inappropriately access IWCC information and then sell that information. Johnson's conduct violated IWCC's Ethics Code.

The fact that some of the information Ms. Johnson sold may have been readily available via an IWCC computer terminal open to the public does not diminish the impropriety of her conduct. According to [employee 2], the information that Ms. Johnson accessed and disseminated was valuable because, as a result of the IWCC's antiquated system, it would require a great deal of work for members of the public to obtain the information Ms. Johnson was dispersing. There is no better evidence of the value of what Ms. Johnson was providing than the fact that Advance Cash Loans was willing to pay Ms. Johnson for her services rather than use the public terminal. Ms. Johnson's position and access to IWCC information allowed her to provide a large amount of IWCC information very quickly.

Therefore, the allegation that Ms. Johnson sold IWCC information in violation of the IWCC's Employee Manual's prohibition against employees using their positions to obtain monetary or nonmonetary considerations is **FOUNDED**.

3. *Ms. Johnson Conducted Personal Business While On State Time.*

The Ethics Code in the IWCC Employee Manual further states:

Conducting personal business while on work time or premises is prohibited. Employees may not participate in outside business or activity during designated working hours.

Ms. Johnson admitted that she would leave her workspace and go to the JRTC's atrium to exchange IWCC information for compensation. She also admitted that she would collect the requested IWCC information at least in part during her normal work hours.

Therefore, the allegation that Ms. Johnson conducted personal business while on State time in violation of the IWCC's Employee Manual's prohibition against employees conducting personal business while on work time or premises is **FOUNDED**.

4. *Ms. Johnson Violated the Ethics Act Gift Ban.*

The Ethics Act Gift Ban provides:

Except as otherwise provided in this Article, no officer, member, or State employee shall intentionally solicit or accept any gift from any prohibited source or in violation of any federal or State statute, rule, or regulation.

5 ILCS 430/10-10.

Ms. Johnson admitted that she received cash and other compensation for providing IWCC documents to a non-State party, namely Advance Case Loans. She stated that during a period beginning sometime in 2009 and through November or December 2010 she received ten cash payments in amounts ranging between \$25 and \$50, and fifty or more gift cards with an approximate value of \$50 each. Ms. Johnson's acceptance of cash and gift cards in exchange for using her State position to provide IWCC information to Advance Case Loans was in violation of a State statute, namely, 720 ILCS 5/33-1, Bribery, which provides:

A person commits bribery when:

(d) He receives, retains or agrees to accept any property or personal advantage which he is not authorized by law to accept knowing that such property or personal advantage was promised or tendered with intent to cause him to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness[.]

Ms. Johnson accepted property (cash and gift cards) knowing that it was tendered to her with intent to cause her to use her position with the IWCC to provide IWCC information more quickly and less expensively than it otherwise could have been provided. Accordingly, the OEIG concludes that Ms. Johnson accepted gifts in violation of a State statute.

Therefore, the allegation that Johnson violated the Ethics Act Gift Ban is **FOUNDED**.

5. *Ms. Johnson Violated the IWCC Employee Manual's Gift Provision.*

The IWCC Employee Manual's Gift provision states:

Any member or employee of the Commission shall not directly or indirectly request or receive any thing or service of value from any source having any interest in proceedings before or business with the Commission. Employees will be subject to discipline, including discharge, for violating this rule.

On multiple occasions, Ms. Johnson received a thing of value from a source having an interest in proceedings before the Commission. As noted above, Ms. Johnson admitted that she received things of value, cash and gift cards, from Advance Case Loans in exchange for providing Advance Case Loans with information from IWCC case files. Advance Case Loans was a source having an interest in proceedings before the Commission. Advance Case Loans appears to have offered and made loans to individuals who had cases pending before the IWCC, using the individuals' pending workers' compensation awards or settlements as collateral. Advance Case Loans described itself as providing lawsuit cash advances to plaintiffs, and expressly lists workers' compensation cases as a type of case for which it makes loans. Advance Case Loans therefore had an interest in the outcome of proceedings before the Commission.

Therefore, the allegation that Ms. Johnson violated the IWCC Employee Manual's Gift provision is **FOUNDED**.

6. *Ms. Johnson Misused IWCC Office Equipment.*

The Office Equipment and Supplies provision in the IWCC Employee Manual states:

Commission property and equipment should be used for work purposes only. Any exceptions must be approved by the chairman.

Ms. Johnson admits using an IWCC photocopier for non-work purposes, namely, to copy files to provide to a non-State entity in exchange for cash and gift cards. She also admits using agency telephones to call a number that is associated with Advance Case Loans. The OEIG's review of phone records confirms that she made over 100 calls to Advance Case Loan's phone number using State-owned telephones.

Therefore, the allegation that Ms. Johnson misused IWCC office equipment and supplies in violation of the IWCC Employee Manual is **FOUNDED**.

7. *Ms. Johnson Violated the Ethics Act Requirement That She Cooperate in the Investigation.*

Section 20-70 of the Ethics Act states:

Cooperation in investigations. It is the duty of every officer and employee under the jurisdiction of an Executive Inspector General ... to cooperate with the Executive Inspector General and the Attorney General in any investigation undertaken pursuant to this Act. Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements. Failure to cooperate with an investigation is grounds for disciplinary action, including dismissal.

5 ILCS 430/20-70.

The evidence gathered in this case, including Ms. Johnson's after-hours entry and departure records, reveal that, during the period examined, she spent more than 27 hours in the IWCC workplace outside of her normal work hours. However, despite having been at the IWCC for 27 hours outside of her work hours, Ms. Johnson never recorded any of those hours on her time sheets. During her second interview, Ms. Johnson stated that:

she often comes into the IWCC to perform work on her off-hours so that she does not fall behind in her work. ... she comes into the JRTC during her non-work hours because she likes to perform her work duties, despite the fact that she is not compensated for off-hours work.

The OEIG concludes that the above statement was a knowing false statement. Though Ms. Johnson admitted in her second interview that she came to the IWCC offices outside of her regular hours to make copies of documents for a non-State party, the OEIG does not credit her statement that she also performed IWCC business outside of her regular work hours.

The OEIG concludes that Ms. Johnson did not perform *any* IWCC work outside of her regular hours. That conclusion is supported by the following evidence:

- (1) Ms. Johnson did not record any after-hours or overtime work on her time sheets or seek approval for overtime work, even though she would have been entitled to compensation for such work. That fact supports the conclusion that she was not engaged in IWCC business when she came into the IWCC office outside of her regular work hours.
- (2) Ms. Johnson was present in the IWCC offices at times not conducive to "catching up" on work, including on two Sundays for about 30 minutes, and on a day for which she was scheduled to be out of the office for personal time. Those facts support a conclusion that she was not engaged in IWCC business when she came into the IWCC office.

- (3) [Employee 1], stated that he never approved overtime for Ms. Johnson, and is unaware of her having worked any overtime or having performed any work duties during times that she was in the IWCC workplace outside her normal work hours. His statements support a conclusion that Ms. Johnson was not engaged in IWCC business when she came into the IWCC office outside of her regular work hours.
- (4) [Employee 2] stated that she could not think of any reason for Ms. Johnson to work overtime, or on weekends or after-hours. That further supports a conclusion that Ms. Johnson was not engaged in IWCC business when she came into the IWCC office outside of her regular work hours.
- (5) Finally, Ms. Johnson's statements regarding her activity outside of her normal work hours were contradictory. During her first interview, Ms. Johnson categorically denied that she was in the IWCC offices outside of her normal work hours in order to copy IWCC files for a non-State party. Yet during her second interview, Ms. Johnson reversed course—she stated that she had performed some copying for a non-State party outside of her work hours, implicitly acknowledging that her initial statement was false. The contradictory statements call Ms. Johnson's credibility into question.

Therefore, the allegation that Ms. Johnson violated the Ethics Act by failing to cooperate with this investigation when she knowingly made the false statement that she came to the IWCC workplace outside of her normal work hours in order to perform IWCC work is **FOUNDED**.

[The following section pertains to an employee who received less than three-days' suspension and the Commission is exercising its authority to redact the report pursuant to 5 ILCS 430/20-52.]

B. [REDACTED]

1. IWCC File Maintenance and Security

The OEIG investigation revealed that IWCC case files have been stored in open unlocked areas and in unlocked file cabinets. Many of the files have been stored for years in open hallways that are accessible by the public. The files contain confidential documents such as medical information and Social Security numbers. Information of that type is protected from disclosure by, at minimum, the federal Health Insurance Portability and Accountability Act (HIPAA) and by Illinois' Personal Information Privacy Act (PIPA).

Because of the layout of the 8th floor of the JRTC, the failure to properly store the IWCC case files in locked locations is a matter of serious concern. The 8th floor of the JRTC is

completely accessible by anyone who enters the floor either from the elevator bank or the stairwell. Once a person is on the 8th floor, there is nothing blocking that person from entering the majority of IWCC work space. Thus, anyone having 24 hour access to the JRTC building, such as Ms. Johnson, would have unfettered access to any and all of the files left in the open areas and unlocked offices.

[The following section pertains to an employee who received less than three-days' suspension and the Commission is exercising its authority to redact the report pursuant to 5 ILCS 430/20-52.]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V. CONCLUSIONS AND RECOMMENDATIONS

[REDACTED]

Based on its investigation and the foregoing analysis, the OEIG issues these findings:

Findings Related to Sherry Johnson

- **FOUNDED** – Sherry Johnson used IWCC information for personal use in violation of the IWCC Employee Manual’s prohibition against using Commission information for personal use.
- **FOUNDED** – Sherry Johnson sold IWCC information in violation of the IWCC Employee Manual’s prohibition against IWCC employees using their positions to obtain monetary or nonmonetary considerations.
- **FOUNDED** – Sherry Johnson conducted personal business while on State time and premises when she collected and photocopied IWCC information for Advance Case Loans, in violation of the IWCC Employee Manual’s prohibition against conducting personal business while on work time or premises.
- **FOUNDED** – Sherry Johnson violated the Ethics Act’s Gift Ban provision by accepting cash and gift cards in violation of the Illinois Bribery Statute.
- **FOUNDED** – Sherry Johnson violated the IWCC Employee Manual’s Gifts provision by accepting cash and gift cards from a source having an interest in proceedings before the IWCC.
- **FOUNDED** – Sherry Johnson violated the Office Equipment and Supplies provision of the IWCC Employee Manual by using IWCC’s photocopier, paper and telephone for non-work purposes.
- **FOUNDED** – Sherry Johnson violated the Ethics Act by failing to cooperate in this investigation.


[The following section pertains to an employee who received less than three-days’ suspension and the Commission is exercising its authority to redact the report pursuant to 5 ILCS 430/20-52.]

[REDACTED]

- [REDACTED]
- [REDACTED]

The OEIG investigation leaves no doubt that Sherry Johnson is unsuitable for continued State employment. The OEIG recommends that she be terminated. Any separation agreement reached with Sherry Johnson should state that she agrees never to seek, nor to accept, employment with the State of Illinois.

The OEIG’s investigation into this matter reveals that the IWCC’s security measures were lacking and susceptible to abuse. [REDACTED]



No further investigative action is needed and this case is considered closed.

Date: September 28, 2012

Office of Executive Inspector General
for the Agencies of the Illinois Governor
32 W. Randolph Street, Ste. 1900
Chicago, IL 60601

Daniel J. Hurtado
Special Counsel

William "Skip" Benz
Assistant Inspector General

Chris Noel
Investigator # 109



OFFICE OF THE GOVERNOR

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CHICAGO, ILLINOIS 60601

PAT QUINN
GOVERNOR

VIA U.S. MAIL AND EMAIL

October 18, 2012

Erin K. Bonales
Deputy Inspector General
Office of the Executive Inspector General
32 West Randolph Street, Suite 1900
Chicago, IL 60601

Re: Response to Final Report in OEIG Case No. 10-00929

Dear Ms. Bonales,

Enclosed is the response of the Office of the Governor ("OOG") to the Office of the Executive Inspector General's ("OEIG") Final Report in Case No. 10-00929.

Please let us know if you have any questions or if we can provide any additional information.

Sincerely,

John F. Schomberg
General Counsel

Enclosures

cc: Jack Lavin, Chief of Staff, OOG (via email, w/encl.)



**Office of Executive Inspector General
for the Agencies of the Illinois Governor**

www.inspectorgeneral.illinois.gov

OEIG RESPONSE FORM

Case Number: 10-00929

Due Within 20 Days of Receipt of
Report

Please check the box that applies.

- ☒ We have implemented all of the OEIG recommendations.
(Provide details regarding action taken.)

See attached.

- ☐ We will implement all of the OEIG recommendations but will require additional time.
We will report to OEIG within 30 days from the original return date.
(Provide details regarding action planned / taken.)

(over)

- ☐ We are implementing one or more of the OEIG recommendations, however, we plan to depart from other OEIG recommendations.

(Provide details regarding action planned / taken and any alternate plan(s).)

- ☐ We do not wish to implement any of the OEIG recommendations.
(Explain in detail why and provide details of any alternate plan(s).)

Signature

John Schomberg

Print Name

Office of the Governor / Grand Council
Print Agency and Job Title

10/18/12

Date

ADDENDUM TO OEIG RESPONSE FORM IN CASE NO. 10-00929

The final report in Case No. 10-00929 recommended that Sherry Johnson be terminated and that any separation agreement state that she agrees never to seek, nor to accept, employment with the State of Illinois. [Redacted]

The Office of the Governor agrees with these recommendations and responds as follows:

- The WCC placed Johnson on administrative leave on October 5, 2012, pending the outcome of a pre-disciplinary meeting scheduled for October 11, 2012. On October 10, 2012, Johnson resigned from the WCC. On October 11, 2012, the WCC notified Johnson that it reserves the right to reinstate the pre-disciplinary meeting and any attendant consequences at a future date if she seeks employment at any State of Illinois government entity. The letter, notifying Johnson of this right, was placed in her personnel file.
- [Redacted]
- In addition, prior to the issuance of this report, the WCC has acted to strengthen the security of its space and files, including:
 - Moving more than 1,000 boxes of files and documents stored throughout the WCC's Chicago office to a secure warehouse for storage;
 - Improving storage of records at the WCC's Chicago office by relocating them to a more secure area, repairing file cabinets and locks, and installing a security-coded lock pad on the door to the Central Files Department;
 - Reducing significantly the number of employees with 24-hour access to the WCC's Chicago office; and
 - Implementing a 24-hour waiting period to obtain information stored in the WCC vault, in order for staff to redact confidential information.
- Finally, the WCC General Counsel plans to conduct a training session for all employees regarding the Gift Ban Act and the privacy of files.